PUBLIC PROSECUTOR

v.

HE KING KIOK & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
T SELVENTHIRANATHAN JC
[FT CRIMINAL TRIAL NO. WPPJ 47-35-89]
16 DECEMBER 1991

CRIMINAL PROCEDURE: *Trafficking dangerous drugs - Husband and wife charged for trafficking dangerous drugs under s. 39(B)(1)(a) - Husband pleaded guilty - Whether statement of facts had to be narrated, examined by the Court and explained to the accused although there was no equivalent of s. 173(b) of the Criminal Procedure Code for High Court trials - Whether husband's plea of guilty unequivocal in light of his request that charges against his wife be reconsidered.*

CRIMINAL PROCEDURE: *Charge - Whether in a charge under s. 39B(1)(a) where the sentence was mandatory dealth penalty it was essential that the Court must ensure the accused understood and entered an unequivocal plea.*

CRIMINAL PROCEDURE: *Sentencing - Scope of sentencing procedure under s. 183(ii) of Criminal Procedure Code - Whether different from the sentencing procedure of Magistrate under s. 173(b) of Criminal Procedure Code.*

A couple were charged under s. 39B(1)(a) of the Dangerous Drugs Act 1952. The first accused (the wife) claimed trial. The second accused (the husband) pleaded guilty. The husband gave a cautioned statement admitting that he was the trafficker but claimed that his wife knew nothing of the contents of the bag containing the drugs which she carried at his request. The Court considered two matters in this case:

(i) whether a statement of facts had to be narrated, examined by the Court and explained to the accused although there was no equivalent of s. 173(b), in the Criminal Procedure Code (the Code) for High Court trials.

(ii) whether the husband's expression of hope that the charges against the wife would be reconsidered in the light of his admission to the offence amounted to his plea of guilty being not unequivocal.

Held:

[1] Unlike s. 173 of the Code which required the Magistrates in summary trials to ascertain whether the accused understood the nature and consequences of his plea, ss. 178 & 183 of the CPC which deals with trials before High Court, did not require such ascertaining process. However, upon an examination of other provisions like s. 183(ii) of the Code and s. 95(1) of the Interpretation Acts 1948 and 1967, the High Court was empowered to require a narration of the statements of facts. In a charge under s. 39B(1)(a) where the sentence is mandatory death penalty it was essential that the Court ensured the accused understands and enters an unequivocal plea.

[2] The husband's hope that the prosecution would reconsider the charges against his wife did not cast doubt on his plea of guilty as the husband had clearly understood every ingredient of the charge and admitted to it. He also had the benefit of Counsels' advice and time to reconsider his plea. His plea was clear and unequivocal.

[Second accused convicted and sentenced to death. First accused's charges withdrawn, acquitted and discharged.]

Cases referred to:
Tang Hee Hing v. PP [1991] 1 CLJ (Rep) 447 ***(foll)***
Lee Weng Tuck & Anor. v. PP [1989] 1 CLJ (Rep) 75 ***(foll)***
Alfred Golathan [1916] 11 Cr App R 79 ***(foll)***
James Robert Vent [1936] 25 Cr App R 55 ***(foll)***

Legislation referred to:
Criminal Procedure Code, ss. 5, 173(b), 178(i), (ii), 183, 186(ii), 199, 202(ii), 230, 231(a)
Dangerous Drugs Act 1952, ss. 39B(1)(a), (2), 37A, 37(da)(i), 41A
Interpretation Act 1948 and 1967, ss. 2(1), 40(1), 95(1)
Criminal Procedure Code [Sing], s. 5

Other source referred to:
Halsbury's Laws of England Vol. 11(2) 4th Edn. (reissue at para. 977)

For the public prosecutor - Farah Suhana binte Ahmad Sarji, DPP; AG's Chambers
For the 1st accused - Karpal Singh, M/s. Karpal Singh & Co.
For the 2nd accused - Mah Weng Kwai; M/s. Mah Weng Kwai & Associates

JUDGMENT

T Selventhiranathan JC:

The first and second accused, He King Kiok and Tan Kim Guan, wife and husband respectively, were charged jointly with having trafficked in 106.1 grammes of heroin at about 7.50pm on 11 May 1989 at Taman Pertama, $3^1/_2$ milestones, Jalan Cheras, Kuala Lumpur, and thereby having committed an offence under s. 39B(l)(a) of the Dangerous Drugs Act 1952 ("the Act") and punishable under s. 39B(2) of the said Act. They were represented by Encik Karpal Singh and Encik Mah Weng Kwai respectively while Deputy Public Prosecutor Farah Suhana appeared for the prosecution.

On the Monday set for the commencement of the trial, before any plea was taken, the learned Deputy Public Prosecutor applied for a short adjournment on the ground that she was apprised of certain facts that morning by both defence Counsel which necessitated her referring the case to her superiors. Her application was supported by the defence Encik Karpal Singh who stated that there were specific reasons for an adjournment while Encik Mah said that he had received certain instructions from the second accused as a result of the decision in another case, of which decision he became aware about a week earlier. He had been instructed by the second accused in the light thereof. After discussion, he had advised the second accused to take time to reflect upon his decision so as to be certain about his instructions. Encik Mah added that he had received final instructions from the second accused that morning (the case having been adjourned to the afternoon owing to Encik Karpal Singh's inability to attend Court in the morning and difficulty in securing the services of a Chinese interpreter in the morning), and he said it was necessary in the light of those instructions for the Deputy Public Prosecutor to refer the matter to her superiors. In the circumstances, a short adjournment of two days was granted.

On the adjourned date, the Court was ready to commence the trial and, in accordance with s. 178(i) of the Criminal Procedure Code ("the Code"), the charge was read and explained to both accused through the interpretation of the Chinese interpreter. They each acknowledged that they understood the charge. The first accused claimed trial. The second accused pleaded guilty.

At this juncture I questioned the second accused as to whether he was aware of the nature and consequences of his plea of guilty. It was explained and interpreted to him in clear and unequivocal terms that the Court could not pass any sentence on him in this case on a plea of guilty other than the mandatory death sentence as provided by law. This was repeatedly explained and emphasised. However, the second accused was inexorable in his resolve to plead guilty. When questioned further, he stated that he was fully aware of the nature and consequences of his plea of guilty, and that he so pleaded of his own free will and without being influenced to do so in any way. After further repeated questioning, I was fully satisfied that his plea of guilty was unequivocal and made of his own volition and I accepted it as such. I did not, however, immediately proceed to find him guilty and convict him thereon as provided by s. 178(ii) of the Code. Instead, I first read the statement of facts provided by the prosecution, and after being satisfied that the facts alleged constituted the offence as contained in the charge, I then proceeded, in accordance with accepted practice, to have the statement of facts read and explained to the second accused.

It has become accepted practice or a salutary unwritten rule of criminal procedure in Malaysia and in other common law jurisdictions for the Court to require, in serious cases, an outline or a statement of the facts of the case to be provided by the prosecution so as to satisfy itself that the ingredients of the charge are met and, in the words of Hashim Yeop A Sani CJ (Malaya) in the case of *Tang Hee Hing v. PP* [1991] 1 CLJ (Rep) 447 at p. 450C, " ... that the accused agrees to all the ingredients of the offence and all the averments in the charge", notwitstanding his plea of guilty and even though the Code does not specifically require an outline or a statement of the facts of the case to be given in such circumstances. However, s. 173 in Chapter XIX of the Code, which deals with summary trials by Magistrates, provides *inter alia:*

(a) When the accused appears or is brought before the Court a charge containing the particulars of the offence of which he is accused shall be framed and read and explained to him, and he shall be asked whether he is guilty of the offence charged or claims to be tried.

(b) If the accused pleads guilty to a charge whether as originally framed or as amended the plea shall be recorded and he may be convicted thereon: **provided that before a plea of guilty is recorded the Court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit, without qualification, the offence alleged against him**

(Emphasis added)

...

(m) (1) ...

(2) If the Court finds the accused guilty of or if a plea of guilty has been recorded and accepted the Court shall pass sentence according to law.

Sections 178 and 183 in Chapter XX of the Code, dealing with trials before the High Court without assessors, read:

178(i) When the Court is ready to commence the trial, the accused shall appear or be brought before it and the charge shall be read and explained to him and he shall be asked whether he is guilty of the offence charged or claims to be tried.

(ii) If the accused pleads guilty the plea shall be recorded, and he may be convicted thereon

(iii) ...

183(i) ...

(ii) If the Court finds the accused guilty or if a plea of guilty has been recorded and accepted the Court shall pass sentence according to law.

It immediately becomes clear from a comparison of the above provisions that the proviso to s. 173(b) of the Code, which is applicable to summary trials before a Magistrate, is absent in the provisions relating to trials in the High Court. In the case of a summary trial before a Magistrate, the proviso makes it mandatory for the Court, before recording a plea of guilty, to ascertain that the accused understands the nature and consequences of his plea and intends to admit, without qualification, the offence alleged against him. In these circumstances it can be said that the Court can only **ascertain** this (emphasis added) after being apprised of the facts of the case and it is therefore a necessary corollary of the proviso to set out an outline or a statement of the facts of the case to satisfy the requirements of the proviso.

There is no provision equivalent to that proviso in Chapter XX of the Code dealing with trials before the High Court without assessors. Equally, Chapters XXI and XXII, which deal respectively with trials before the High Court with the aid of assessors and trials by jury before the High Court, also have no provision equivalent to that proviso, and provisions in Chapters XXI and XXII dealing with pleas of guilty (see ss. 186(ii) and 202(ii)) are couched in the same language as s. 178(ii) in Chapter XX. However, there is provision in s. 183(ii) in Chapter XX for the Court to pass sentence according to law if a plea of guilty has been recorded and **accepted** (emphasis added). This provision as to the acceptance of a plea of guilty must of necessity entail the Court enquiring into the charge and offence along the lines of the proviso to s. 173(b) in Chapter XIX.

Although there is no provision equivalent to s. 183(ii) in Chapters XXI and XXII (ss. 199, 230 and 231(a) therein must be interpreted to mean passing sentence after trial upon conviction or finding of guilt, as the case may be, and not upon a plea of guilty), it cannot be said that in a case under those Chapters a Judge of the High Court is prevented from accepting a plea of guilty and passing sentence of death according to law: see *Lee Weng Tuck & Anor. v. PP* [1989] 1 CLJ (Rep) 75 at p. 82, per Mohamed Azmi SCJ. Since ss. 186(ii) and 202(ii) in Chapters XXI and XXII empower a High Court to record a plea of guilty if the accused pleads guilty and convict him thereon, it is a necessary adjunct of that power for the High Court to have power also to pass the sentence provided by law for the offence in question. I am further fortified in this view by s. 95(1) of the Interpretation Acts 1948 and 1967 which reads:

95(1) Where a written law confers power on any person to do or enforce the doing of any act or thing, all such powers shall be understood to be also conferred as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

[The equivalent provision in respect of the construction of legislation revised under the Revision of Laws Act 1968 and of post-18 May 1967 legislation is s. 40(1) of the Interpretation Acts 1948 and 1967 (see s. 2(1) of the Acts as to application)]. The High Court must in these circumstances be understood to be also conferred with the power to pass sentence according to law for the offence in question as such power is reasonably necessary to enable the High Court to enforce, or give effect to, its conviction of the accused. Otherwise its power to record a plea of guilty and convict the accused thereon will be rendered nugatory.

The basis for the accepted practice or unwritten rule of criminal procedure in Malaysia for the Court to require, in serious cases, an outline or a statement of the facts of the case to be provided before recording and accepting a plea of guilty and convicting the accused thereon may be traced to s. 5 of the Code which in its original form read:

> 5. As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force the law relating to criminal procedure for the time being in force **in the Colony** shall be applied so far as the same shall not conflict or be inconsistent with this Code and can be made auxiliary thereto.

Section 5 of the Criminal Procedure Code of the then-Colony of Singapore provided in turn in similar circumstances for "the law relating to criminal procedure for the time being in force **in England**" to be applicable in the Colony. The reference in s. 5 of our Code to the law relating to criminal procedure in "the Colony" was substituted with a reference to "the Republic of Singapore" *vide* the Criminal Procedure Code (Amendment) Act 1967 (Act No. 25 of 1967), which came into force on 1 June 1967. However, this circuitous mode of referring to the law relating to criminal procedure for the time being in force in England through the Criminal Procedure Code of Singapore was done away with and substituted with a direct reference to such law in England *vide* the Criminal Procedure Code (Amendment and Extension) Act 1976 [Act A324], which came into force on 10 January 1976.

In England, the law relating to criminal procedure requires the prosecution to state the facts in open Court upon a plea of guilty. To quote from Vol. 11(2) of *Halsbury's Laws of England,* 4th Edn., reissue, at para. 977:

> An accused must have a free choice of plea; he is not to be taken to admit an offence unless he pleads guilty to it **in unmistakable terms with appreciation of the essential elements of the offence** ... (Emphasis added). An accused must himself plead; it is not sufficient for his Counsel to plead on his behalf or to indicate that the accused wishes to plead guilty. In the case of an unrepresented accused, care must be taken to ensure that he fully understands the elements of the offence to which he is pleading guilty, and this is particularly the case where a possible defence is disclosed in the witness statements or depositions ...
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> The public has a right to know the circumstances of the commission of an offence and upon a plea of guilty the prosecution should thereupon state the facts in Open Court *Practice Direction* [1968] 3 All ER 434.

It would not be inapproriate to reproduce here the Practice Direction of the Court of Appeal, Criminal Division, as enunciated by Lord Parker CJ:

> In the opinion of this Court it would be regrettable if, as a result of the Criminal Justice Act 1967, the press and the public were deprived of the right inherent in our system of the administration of criminal justice, to know the circumstances of the crime for which an accused is convicted and sentenced.

This can only occur in cases in which under that Act, either there have been no committal proceedings or committal proceedings which cannot be fully reported, and in which in either event the accused pleads guilty at the trial. However, even in such cases the prosecution state the facts in open Court at the trial and this they should continue to do though in somewhat more detail than heretofore.

The only exception is the comparatively rare case when an accused pleads guilty at the trial to murder, in which case there is only one sentence, life imprisonment, which can be imposed. There is then, so far as the Judge is concerned, no need for any reference to the circumstances of the crime, since whatever the circumstances the sentence must be the same. The Judge will have read the depositions; the accused will inevitably be advised and represented by Counsel, and often by leading Counsel, and the accused will have chosen to plead guilty. Moreover, so far as the public was concerned until the changes effected by the Criminal Justice Act 1967 the committal proceedings were held in public.

> This Court however recognises that if this should be the practice for the future there may be rare cases in which the circumstances of the murder are never publicly revealed. That is clearly wrong. Accordingly, this Court directs that the prosecution, following a plea of guilty to murder, should, as in cases of pleas of guilty to other offences, state the facts in open Court before sentence is imposed.

Where an accused pleads guilty to a charge of trafficking in a dangerous drug under s. 39B(l)(a) of the Act which is punishable under s. 39B(2) thereof, it is essential that there should be a narration of the facts of the case for the reasons set out above and also because the case would have been transmitted to the High Court as provided in s. 41A of the Act without a preliminary inquiry being held under Chapter XVII of the Code, and the High Court will not then have had the benefit of reading the depositions which it otherwise would have had.

Returning to the present case, according to the statement of facts presented (Exhibit P2), acting on information received, a police party comprising eleven personnel lay in ambush and commenced observation at the scene in the vicinity of a Kentucky Fried Chicken (KFC) outlet at about 6.15pm on 11 May 1989. At 7.50 p.m. a Mercedes-Benz motorcar NK 3898 driven by the second accused stopped at the side of the road at the $3^{1}/_{2}$ milestone Jalan Cheras with the first accused in the front passenger seat and three children in the back. The police party sprang into action and approached the car but before they could reach it, the first accused and the three children were seen getting out. The first accused was seen holding in her right hand a white plastic bag. The car was then driven off by the second accused and turned left into Jalan Selangat and further left towards the junction of Taman Pertama, Cheras but was forced to come to a halt in front of the KFC outlet owing to traffic congestion.

In the meantime, six of the police personnel gave chase to the first accused and the three children who were heading towards an overhead bridge over Jalan Cheras. The first accused was apprehended by ASP Othman Harun who was heading the police team. He seized the white plastic bag (Exhibit P4) she was holding in her right hand. At the same time, five other police personnel led by ASP Mah Khye Beng succeeded in arresting the second accused while he was still in the car in front of the KFC outlet.

ASP Othman Harun searched the white plastic bag which was carried by the first accused and found it to contain four newspaper packages (Exhibits P5, P6, P7 and P8) which on being opened were each found to contain a plastic packet with a pinkish granular/powdery substance inside believed to be heroin (Exhibits P5A, P6A, P7A and P8A respectively). The contents of the four plastic packets were analysed by Government chemist Kee Sue Sing who found the pinkish granular/powdery substance to be heroin weighing a total of 106.1 grammes. The chemist's report (Exhibit P9) confirmed that heroin is a dangerous drug listed in the First Schedule to the Act.

As a result of police investigations, on 16 May 1989 at 12.45 p.m. the second accused voluntarily gave a cautioned statement (Exhibit P10) to one Inspector Kamaruddin wherein he admitted that he had asked his wife, the first accused, to hold the plastic bag containing heroin which was recovered from her. However, he exonerated her from all culpability in the matter by saying that she was not aware of the contents of the bag.

After the statement of facts and the position of the exhibits in relation to the facts were explained to him, the second accused admitted the facts in full and without reservation, and he also acknowledged the exhibits to be correct without any hesitation or doubt. The cautioned statement (Exhibit P10) admitted to have been voluntarily made by him under

s. 37A of the Act was found to be consistent with the statement of facts (Exhibit P2). The second accused knew (as admitted in Exhibit Pl0) that the plastic bag (Exhibit P4) contained heroin weighing about $2^{1}/_{2}$ pounds.

The chemist found the four plastic packets of heroin (Exhibits P5A, P6A, P7A and P8A) recovered from the plastic bag to weigh a total of 1,183.47 gramms nett (as stated in Exhibit P9), which is about $2^{3}/_{5}$ pounds (1,000 grammes being equivalent to 2.20462 pounds). In the light of the cautioned statement, the second accused knew it was heroin that the first accused was carrying for him. He knew that the heroin weighed about $2^{1}/_{2}$ pounds. It was under his control, although carried at his behest by the first accused, which attracted the presumption under s. 37(d) of the Act deeming him to be in possession of the heroin and knowing its nature. As the second accused was found to be in possession of 106.1 grammes of heroin, he was presumed to be trafficking in the said drug under s. 37(da)(i) of the Act which proved the commission of an offence under s. 39B(l)(a) which was punishable under s. 39B(2) of the Act. I was therefore fully satisfied that all the ingredients of the offence to sustain the charge were proved and found the second accused guilty and convicted him on his unqualified plea of guilty and full admission of the facts without any reservation whatsoever.

Mr. Mah Weng Kwai then addressed the Court. He acknowledged that there was only one penalty under the law for the offence, that is the death penalty, and reiterated that the plea of guilty was an unqualified one. The only instance where Mr. Mah's address caused concern to the Court as to the plea of guilty being unequivocal was when he said that the second accused hoped that by his admission the prosecution will reconsider the charge against the first accused, who is his wife. In short, Mr. Mah said, the second accused was pleading guilty to save the neck of his wlfe.

At this juncture I indicated to Mr. Mah that in the light of what he said I could not accept the plea of guilty as being unqualified but Mr. Mah quickly asked me to hear him out (this was not recorded in view of what followed immediately). Mr. Mah then said that what was more important (and which was central to the plea of guilty) was that the second accused admitted that he had done wrong that he wished to own up to his wrongdoing and that his wife was innocent. According to Mr. Mah all the consequences of his plea of guilty had been explained to him and he had also been advised to appeal to the Supreme Court against the decision of Faiza Thamby Chik J where he was found guilty and sentenced to death earlier in respect of another drug offence. But he chose not to appeal in that case and remained steadfast in his decision to plead guilty in this case, which decision was his alone.

The proceedings in Court up to this juncture took one hour (from 9.45 a.m. to 10.45 a.m. according to the record of time maintained by the clerk of Court). However I did not pass sentence immediately and adjourned Court for half an hour (up to 11.15 a.m. according to the record) as I wanted to give the second accused further time to reflect upon his plea. When Court resumed had he wanted to retract his plea I certainly would have given it every consideration as a plea of guilty can generally be allowed to be retracted at any time before sentence is passed and even more so in a case where the capital punishment is involved. However there was no such application and the second accused maintained his plea of guilty. In the circumstances the Court was constrained to pass the only sentence provided by law for the offence which is the sentence of death.

Upon sentence of death being passed in respect of the second accused, the learned Deputy Public Prosecutor withdrew the charge against the first accused whereupon she was acquitted and discharged.

In considering whether to accept the plea of guilty of the second accused as unequivocal, I was guided by the decision of the Supreme Court in *Lee Weng Tuck & Anor. v. PP* which was approved and followed in *Tang Hee Hing v. PP*. It is clear from the provisions of the Code and the authorities cited above that a Judge of the High Court can accept a plea of guilty and convict thereon in capital cases (see ss. 178(ii) and 183(ii) of Chapter XX, s. 186(ii) of Chapter XXI and s. 202(ii) of Chapter XXII of the Code), and pass sentence of death on such plea, provided that proper safeguards, including those required by s. 173(b) of the Code, are observed. In delivering the judgment of the Supreme Court in *Lee Weng Tuck*, Mohamed Azmi SCJ observed at p. 81:

> Failure to do so (that is, to observe proper safeguards) would render the plea of guilty invalid, and in such event the question of exercising a discretion to permit an accused person to change his plea could not arise at all. A plea of guilty must be valid and unequivocal, and in order to determine the validity of a plea of guilty, the safeguards which must be followed might be stated as follows:
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> (i) The Court must ensure that it is the accused himself who wishes to plead guilty. Thus in *R v. Tan Thian Chai & Anor.* [1932] MLJ 74, Whitley J held that an accused person should plead guilty or claim to be tried by his own mouth and not through his Counsel.
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> (ii) The Court must ascertain that the accused understands the nature and consequences of his plea.
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> (iii) The Court must ascertain that the accused intends to admit without qualification the offence alleged against him.
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> Thus, it is insufficient that the plea of guilty under safeguard (i) is unequivocal if the other safeguards are not complied with. In capital cases, for compliance with safeguard (ii) it is not sufficient for the Judge to merely and formally record that 'The accused understands the nature and consequences of his plea of guilty'. In *Koh Mui Keow v. R* [1952] MLJ 214, Brown J ruled that in serious cases which warrant a sentence of imprisonment, and where the charge contained one or more ingredients or questions, and the accused was not represented by Counsel, each ingredient and each question involved should be explained by the Magistrate to the accused. In that case, a retrial was ordered because the appellate Judge was not satisfied that the accused had understood and admitted each and every allegation in the charge. In capital cases, we are of the view that even if the accused is represented by Counsel when he pleads guilty, there must be some indication on record to show that the accused actually knows not only the nature of his plea of guilty to the charge, that is the nature of the capital offence he is pleading guilty to, but also the consequences of his plea, that is there will be no trial and that the sentence of death may be imposed on him even though such sentence is not mandatory.
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> As regards the third safeguard, it is an established practice that on a plea of guilty, the prosecuting officer would supply to the Court the statement of facts constituting the offence with which the accused is charged. The statement is then read out and explained to the accused. Unless the accused admits the facts without qualification, the practice is to treat the plea as a plea of not guilty. This safeguard is of the utmost importance in serious cases. In capital cases, we suggest that the statement of facts supplied to the Court should first be read by the Judge himself to enable him to decide whether the facts alleged amount to an offence as contained in the charge. It is only when he is so satisfied, that the statement will be read out to the accused. If the accused admits the statement with qualification or if his admission is not clear or doubtful, then the Court should proceed with the trial.

Applying the safeguards emunerated in *Lee Weng Tuck* to this case, I found as follows:

(i) It was the second accused himself who pleaded guilty. His Counsel was present throughout the proceedings and had even advised him to claim trial but he insisted on pleading guilty and maintained that plea all through.

(ii) The second accused understood the nature and consequences of his plea as it was repeatedly impressed upon him by the Court that there was only one sentence allowed by law in this case and that was the sentence of death. The facts of the case and the ingredients of the charge were also explained to him.

(iii) The second accused admitted without qualification the offence alleged against him. In my view, the address by his Counsel that "... he is pleading guilty to save the neck of his wife" did not denude the plea of guilty of its unequivocal character when viewed in the totality of the facts obtaining and admitted without qualification.

The first and second accused were charged jointly. The first accused was apprehended while carrying the incriminating exhibits. However, according to the cautioned statement of the second accused, the first accused was carrying the plastic bag at his behest without knowing that it contained heroin, whereas he did. In other words, his cautioned statement reinforced his plea of guilty while exonerating the first accused. In these circumstances it cannot be said that the plea of guilty was not unequivocal. The second accused was not qualifying his plea by attributing blameworthiness to his wife, the first accused. As stated by Mr. Mah, the second accused was in fact aware that he had done wrong and was owning up to his wrongdoing and absolving his wife of any complicity in the offence. Had the case proceeded to trial, the first accused would have been entitled to an acquittal on evidence to this effect from the second accused. In the event, the prosecution withdrew the charge against the first accused and she would be able to plead *autrefois acquit* should the prosecution consider charging her on the same facts again. In respect of the third safeguard specified by Mohamed Azmi SCJ, I was satisfied after due consideration that the plea of guilty was unequivocal and in unmistakeable terms, made with genuine contriteness.

It cannot be gainsaid that a plea of guilty must be rejected and the case proceeded with to trial where the accused voices any reservation to the charge that he is pleading guilty to or to the statement of facts in any material particular. On the other hand, where he has pleaded guilty in unmistakable terms and been sentenced on that plea, he cannot then resile from or retract that plea. In *Alfred Golathan* [1916] 11 Cr App R 79, the appellant was convicted on his own plea of entering a dwelling-house by night with intent to steal, and was sentenced to seven years' penal servitude. On appeal to the Court of Criminal Appeal, it appeared, from the shorthand note of the proceedings in the Court below, that at most he admitted entering the premises, but added that he did not do so for the purpose of stealing. That was taken as a plea of guilty in the Court below. In quashing the conviction and sentence, Reading LCJ said at p. 80 of the report:

> In our view this man's plea was not a plea of guilty at all, and no man is to be convicted on a plea which is ambiguous. If there is any ambiguity it is to be taken as a plea of not guilty, and evidence given against him in the ordinary course. He must not be taken to have admitted his guilt unless he does so in unmistakable terms. That being the opinion of the Court, this conviction must be quashed, and with it the sentence. The appellant was never tried for the offence, and in the ordinary course the Court has power to remit the case to be tried where a plea of guilty is acted on which is not really a plea of guilty. We have no power to order a new trial, but where there has been no trial we can order one, as was done in *Baker* [1912] 7 Cr.App R. 217 and *Ingleson* [1914] 11 Cr.App.R. 21. The Court has said, in *Rhodes* [1914] 11 Cr.App.R. 33, that it will take into account all the facts and circumstances of the case in order to satisfy itself whether the appellant has pleaded guilty or not. **It is obvious that a man who has pleaded guilty to the offence cannot come to this Court and say that he did not understand or appreciate the effect of the plea**.
> (Emphasis added)

In *James Robert Vent* [1936] 25 Cr.App.R. 55, the appellant pleaded guilty to a charge of murder and was sentenced to death. When he pleaded guilty, the Judge asked one of the Counsel who was present in Court to interview the appellant and explain the position to him. Counsel did so and informed the Judge that he had entirely failed to get any coherent statement from the appellant, and that the question had occurred to him whether the appellant was fit to plead to the indictment. The Judge, who had before him a report from the senior medical officer of Brixton Prison, said that he desired to hear the officer's evidence. He was accordingly sworn, and said that he saw no reason to depart from the view which he had put forward in his report, and that the appellant was, in his opinion, fit to plead. Counsel then took no further part in the trial, the indictment was again put to the appellant, and he again pleaded guilty.

On appeal to the Court of Criminal Appeal, the only question was whether the appellant's plea was entirely satisfactory, having regard to the nature of the charge. In dismissing the appeal Avory J said at pp. 57 and 58 of the report:

> ... When first arraigned he unequivocally pleaded guilty, and the learned Judge then requested Mr. Hawke, to whom we are indebted for telling us what took place, to see the prisoner and explain to him what the position was and the consequences which would necessarily follow his plea of guilty. Counsel then saw the prisoner and explained the situation to him, and informed the learned Judge of the result of the interview. Thereupon the medical officer of the prison where the appellant had been confined was called and gave evidence as to the conclusion which he had formed with regard to the appellant's ability to understand the nature of the charge, to put forward any defence which was open to him, and to call evidence. The medical officer said that he was satisfied that the appellant was sufficiently sane to understand the nature of the charge and in a position to follow it, to know whether he wished to be represented or not, and to appreciate the nature of his own plea and the consequences following from it. Thereupon the appellant was again arraigned and asked whether he wished to plead guilty or not guilty, and he again unequivocally pleaded guilty.
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> In those circumstances it appears to us that there was no sufficient reason for any jury being empanelled to try the issue whether the appellant was fit to plead. It is only in a case where there is some reason to doubt whether an accused person appreciates the nature of his confession or the consequences resulting from it that a jury is empanelled to try that issue. In this case we can see no ground for saying that any course could have been pursued other than that which was pursued, particularly in view of the evidence of the appellant's own statement to the police which was before the Court.

Here, the second accused had full benefit of advice from experienced Senior Counsel before and throughout the proceedings and ample time (about one week) to ruminate upon the course of action to choose after he had been found guilty of a similar charge by another Court. He chose to plead guilty in clear and unmistakable terms which left the Court with no option but to accept his plea, convict him thereon and sentence him according to law.

Also found at [1992] 4 CLJ 2159